

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 68/2006

Maqbool Ahamd,
son of Ksimsab Bangalur, aged 35
years, resident of Ayodhya Nagar,
Ambedkar Colony, Old Hubli, Dist :
Dharwad, Karnataka, (presently in Appellant.
Aguada Jail).

V/s.

S T A T E Respondent.

Mrs. Asha Dessai, Advocate under Legal Aid Scheme for the appellant.

Mr. C. A. Fereira, Public Prosecutor for the State/Respondent.

CORAM : R.S. MOHITE &
N.A. BRITTO, JJ.

DATE : SEPTEMBER 12, 2007.

ORAL JUDGMENT: (Per MOHITE, J.)

This is an appeal filed by the appellant Maqbool Ahamd (hereinafter referred to as “the accused”), impugning a Judgment and Order passed by the Sessions Judge, South Goa, Margao on 28.10.2005 in Sessions Case No.27/2004. By the impugned Judgment and Order, the trial Court has convicted the accused for an offence punishable under Section 302 of the Indian Penal Code (IPC) and on this count, it has sentenced him to suffer

Imprisonment for Life and to pay a fine of Rs.2,000/-, in default, to suffer Rigorous Imprisonment for two months. The accused is further convicted for an offence punishable under Section 309 of the IPC and on this count, he is sentenced to suffer Simple Imprisonment for six months and to pay a fine of Rs.500/-, in default, to suffer further Simple Imprisonment for 15 days. It has been directed that both the sentences are to run concurrently and benefit of set off has been given to the accused.

2. The brief facts of the prosecution case, were as under :

(a) That the accused was the husband of the deceased Salima Bi and the father of PW.5 Nasreen Bhanu. From the deceased Salima Bi, he had two daughters by names Afrin and Yasmin. After Salima had married the accused, they had gone to reside in Hubli. The accused, however, used to drink liquor and assault the deceased. He used to also tell the deceased to get money from her parents. On occasions, he used to assault the children with a rope and used to also beat Salima with a water pipe.

(b) Being fed up with the behaviour of the accused, about seven months prior to the incident, which occurred on 20.4.004, the deceased Salima left her husband and came to reside with her mother at Pixem Dongri in Vasco. The intention of coming to Goa was to look for a job in

Goa. In due course of time, her children followed her.

(c) About two months prior to the incident, the accused followed his wife to Goa and started residing at Bogmalo. He used to visit his wife and the children about once a fortnight.

(d) On 20.4.2004, PW.5 Nasreen Bhanu along with her two sisters, deceased Salima and her aunt Zaibun (DW.1) had gone to Vasco market to click group photographs and after clicking of the photographs, while they were returning back home at about 12.30 p.m., on their way, they met the accused who had followed them. The accused asked Salima whether she was willing to come to Hubli, to which Salima replied that she had no such desire. Then the accused assaulted Salima with slaps and sticks, as a result of which, Salima fell on the ground. The accused then removed a knife which was hidden near his waist under his pant and stabbed on her back, abdomen, legs and thigh. This incident was witnessed by PW.5 Nasreen Bhanu, her sisters and her aunt Zaibun. Aunt of PW.5, Nasreen and her grand mother Mehboobi arrived at the spot. Grand mother tried to give some water to Salima. Some neighbours had also arrived at the spot. The accused stabbed himself on his abdomen with the same knife and as a result of which he fell on the ground. He sustained injury to himself. Police arrived on the spot and took away the accused and Salima in a police jeep. While they were being taken away, the knife used by the accused with which he had caused

injuries to Salima and himself and which was stained with blood, was left at the scene of offence.

(e) Salima was then carried in an unconscious state to the Cottage Hospital at Chicalim, where she was attended by PW.7 Dr. Kedar Raikar, who found that she was unconscious and had multiple deep lacerated wounds in the chest, abdomen and on the left hand. He then stated that she was profusely bleeding. He gave her first aid and referred her to the Goa Medical College for further treatment. He also examined the accused and found that he had a lacerated wound on the left side of abdomen with blunt abdominal trauma with acute profused bleeding. He found that he was in hypovolumic shock. He referred the accused also for further treatment to the Goa Medical College. He then issued a Medical Certificate (Exhibit-19)

(f) At the Goa Medical College, the deceased Salima expired. Later her body was subjected to a post-mortem. The post-mortem report which is exhibited as Exhibit PW.22/E has been admitted into evidence through an application under Section 294 of Cr.P.C. The same indicates that there were about 10 cut wounds on the body of the deceased, inclusive of wounds on the back, chest, sides and hands.

(g) On the same day at about 2.30 a.m., PW.10 P.I. Mahesh Gaonkar who was Incharge of Vasco Police Station received an information that an incident of stabbing had taken place wherein Salima been seriously injured.

He further received information that the accused Magbool Ahamd had also injured himself and that both of them had been shifted to the Goa Medical College Hospital. PW.10 then proceeded to the Goa Medical College Hospital and tried to record statements of the victim and the accused. The Doctor, however, certified that they were not in a fit condition to record statements. In the evening, after returning to the Police Station, P.I. Gaonkar received an information that the victim had died while undergoing treatment. He also received an information that PSI Sanjay Dalvi had registered a crime under Cr. No.63/04 under Sections 307 and 309 of IPC. PI Gaonkar then took over the investigation from PSI Dalvi and converted the crime into Section 302 IPC. He attached the clothes of the victim. He then also attached blood stained clothes of the accused. On 21.4.2004, he conducted the inquest panchanama (Exhibit-21). He sent the dead body for post-mortem examination. He recorded statements of various witnesses on 22.4.02. He got the sketch of the place of the incident prepared. He arrested the accused on 1.5.2004. He submitted all the exhibits for chemical analysis vide his covering letter dated 10.6.2004. On 26.7.2004, he collected a final medical certificate. He received the reports from CFSL Hyderabad and forwarded the same to the Court. Ultimately, after completing the investigation, he filed a charge-sheet.

3. In due course, the matter was committed to the Court of Sessions

at Margao and charges came to be framed for offences punishable under Sections 302 and 309 of IPC. In order to prove its case, the prosecution examined, in all, 10 witnesses. These included two eye witnesses i.e. PW.5 Nasreen Bhanu and PW.1 Rameeza Shaikh. PW.2 Cajeiviro D'Souza was yet another witness who had arrived at the spot immediately after the assault. In fact, he was an eye witness to the subsequent act of the accused in trying to stab himself with the knife with which he had assaulted Salima. PW.3 Andrew Pereira was a the person who had also arrived and seen the accused stabbing himself. PW.4 Hanif Shaikh was examined as a Panch to prove the scene of offence panchanama, which was duly proved and exhibited as Exhibit-15. PW.6 Mehboobi, who was the mother of Salima, was examined as a supporting witness. PW. 7 Dr. Kedar Raikar was examined to prove the injuries on the deceased and the accused. PW.9 PSI Sanjay Dalvi and PW.10 PI Mahesh Gaonkar, were the other witnesses examined by the Prosecution. Prosecution also produced certain other relevant documents such as post-mortem report and chemical analysis report.

4. On behalf of the defence, the sister of the accused Zaibun who was admittedly present at the spot, was examined as DW.1. Though there is no particular suggestion put to the prosecution witnesses, it may be mentioned here that in the 313 statement, the story put up is that while they were

standing near the scene of offence, a third person came and stabbed both of them. It may also be mentioned here that this story is not even supported by DW.1 Zaibun. Relying upon the aforesaid documentary and ocular evidence, the trial Court convicted and sentenced the accused as aforesaid. Being aggrieved by the conviction and the sentence, the accused filed the aforesaid appeal in this Court.

5. On behalf of the accused, it was sought to be contended that the eye witnesses were interested witnesses. That the oral evidence given by these witnesses did not tally with the medical evidence brought by the prosecution on record. Our attention was sought to be drawn to the evidence of PW.7 Kedar Raikar and it was sought to be contended that the injuries on the legs mentioned by the so called eye witnesses were not referred to by Dr. Raikar. On perusing the evidence, we find that PW.5 is the daughter of the accused and the deceased. At the time of evidence, she was a young girl aged 13 years. She has given a detailed description of what she had witnessed. Her evidence is unequivocal on the fact of the accused stabbing Salima. In fact, the accused had not denied his presence at the scene of offence. PW.5 Nasreen Bhanu talks about her aunt PW.1 Rameeza coming to the spot immediately thereafter. PW.1 Rameeza Shaik had clarified that she was at her residence, which was only 10 metres away from the scene of offence. She had

stated in her evidence that she had witnesses the accused stabbing Salima. There is absolutely nothing in the cross examination either of PW.5 Nasreen or PW.1 Rameeza which would cast any suspicion on their evidence. There is no contradiction with their police statement and the police have recorded their statements immediately on the date of the incident itself. Besides this, chemical analysis report indicates that there was human blood found on the knife and on the clothes of the accused. It may be that the blood groups could not be determined due to disintegration of the samples, but that by itself would not derogate from the prosecution case. DW.1 Zaibun who is the sister of the accused also did not support the defence version of some third person stabbing both, the accused and the deceased.

6. We are not impressed with the submission about the medical evidence not being in consonance with the ocular evidence. It appears from the record that Dr. Kedar Raikar only examined the deceased with the intention of giving first aid to Salima before she was referred to the Goa Medical College Hospital, where she ultimately succumbed to her injuries. The postmortem report clearly showed injuries of cut wounds on the legs, apart from the wounds on the chest, back and hands. In our view, this medical evidence completely corroborates the evidence of the eye witnesses.

7. It was contended by the learned Public Prosecutor that the accused had not put up his defence regarding assault on him and Salima by a third party and, therefore, he must be taken to have accepted the prosecution case. He relied upon a Judgment of a Division Bench of this Court in the case of *M/s. Hindoostan Spg. & Wvg. Mills Ltd., Mumbai vs. Hindustan Crown Mills, S.K.K.S. Sanghatana & ors.*, reported in 2007(4) ALL MR 376, in which relying upon a Judgment of the Apex Court in the case of *Sarwansing vs. State of Punjab*, reported in 2003(1) SCC 240, it was observed that while cross examining a witness, the Counsel is bound to put up to each of the opponent's witness in turn, so much of his own case as concerns that particular witness or in which that witness has any share and that if he asks no question with regard to this, then he must be taken to have accepted the opponent's case in its entirety. In its judgment in the case of *Sarwansing vs. State of Punjab, (supra)*, the Apex Court had observed that whenever the opponent declines to avail himself of the opportunity to put up his case in the cross examination, it must follow that the evidence ought to be accepted. It was contended that the defence version of the third party stabbing the accused and the deceased, was never put to the eye witnesses. We accept this contention. It may be mentioned here that the version given by the eye witnesses also stands corroborated by the incised wounds found on the abdomen of the accused.

8. Consequently, we believe the version of the eye witnesses. As a result, we find that there is no substance in the appeal and, the appeal, therefore, stands rejected.

R.S. MOHITE, J.

N.A. BRITTO, J.

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